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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON DEAN HAMMERS,

Defendant and Appellant.

F057344

(Super. Ct. No. VCF212878)

**MODIFICATION OF OPINION
[NO CHANGE IN JUDGMENT]**

It is ordered that the opinion filed herein on March 10, 2010, be modified as follows:

On page 2, in the second paragraph, delete “Appellant was found not guilty on counts 2 and 3” and replace it with the following sentence:

Appellant was found not guilty on count 2 and guilty on count 3.

On page 7, delete the following consecutive sentences in the incomplete paragraph: “The evidence challenged on appeal all pertained to count 3, the attempted

auto theft. Appellant was acquitted of his charge. He was also acquitted of count 2 (firearm possession by a felon) and only convicted of misdemeanor simple assault as a lesser included offense to count 1; the jury found the firearm use allegation attached to count 1 not true.” The deleted sentences are replaced with the following:

Appellant was acquitted of count 2 and only convicted of misdemeanor simple assault as a lesser included offense to count 1; the jury found the firearm allegation attached to count 1 not true.

At the bottom of page 7 and the top of page 8, delete the following sentences: “He was only convicted of misdemeanor simple assault, and this conviction is supported by substantial evidence. It is not reasonably probable that the jury would have acquitted appellant of this crime if the contested evidence had been excluded in whole or in part.” The deleted sentences are replaced with the following:

The jury only found appellant guilty of misdemeanor simple assault and unlawfully taking a vehicle; these convictions are supported by substantial evidence. It is not reasonably probable that the jury would have acquitted appellant of these crimes if the contested evidence had been excluded in whole or in part.”

On page 8, in the last sentence of the second complete paragraph, delete “, particularly since they acquitted appellant of attempted car theft.” Insert a period following the word “purpose” in this last sentence, so that the modified sentence reads as follows:

There is no support in the record for a claim that the jurors used the prior crimes evidence for any improper purpose.

Except for the modifications set forth, the opinion previously filed remains unchanged.

This modification does not effect a change in judgment.

Levy, Acting P.J.

WE CONCUR:

Cornell, J.

Kane, J.